



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, सोनवार, 25 अप्रैल, 2005/5 वैशाख, 1927

हिमाचल प्रदेश सरकार

निर्वाचन विभाग

अधिसूचना

शिमला-171009, 11 अप्रैल, 2005

संख्या 3-2/2005-ई० एल० एन०.—भारत निर्वाचन आयोग के आदेश, दिनांक 31 मार्च, 2005, जो कि हिमाचल विकास कांग्रेस का इंडियन नेशनल कांग्रेस में विलय के सम्बन्ध में है, को जनसाधारण की सूचना हेतु प्रकाशित किया जाता है।

आदेश द्वारा,

मनीषा नन्दा,
मुख्य निर्वाचन अधिकारी,
हिमाचल प्रदेश।

भारत निर्वाचन आयोग

ELECTION COMMISSION OF INDIA

Dispute regarding merger of Himachal Vikas Congress with the Indian National Congress.

Dated : 31st March, 2005.

Present :

For the pro-merger group :

1. Shri Sukh Ram
2. Shri Braham Sarup Sharma, Advocate

Opposing the merger

For Shri Des Raj Sharma Group :

1. Shri Des Raj Sharma
2. Shri Jasbir Malik, Advocate
3. Dr. Ramesh K. Haritash
4. Ms. Prerna Kumari, Advocate

For Shri Karam Chand Bhatia Group :

1. Shri Karam Chand Bhatia
2. Shri A. P. Jaswal
3. Shri Sain Dass

ORDER

1. The question for determination here is whether the Himachal Vikash Congress ('HVC for short) has merged with the Indian National Congress ('INC' for short) and has ceased to exist as a separate political party. The HVC is a recognized State party in Himachal Pradesh with the symbol 'Telephone' as its reserved symbol. The legislature strength of the party is a lone MLA in the Himachal Pradesh Legislative Assembly, Shri Sukh Ram. The INC is a recognized National Party.

2. The issue was first brought before the Commission through a letter dated 17-04-2004 (received on 21-04-2004) signed jointly by Shri Karam Chand Bhatia and Shri Des Raj Sharma. In the said letter, they had referred to a decision of Shri Sukh Ram who was earlier the President of the party, to merge the party with the INC. They stated that there was no merger of the party as such and it was only a case of Shri Sukh Ram along with some of his supporters joining the INC and that they were elected as the Working President and General Secretary respectively of the HVC on 16-04-2004. Since these developments occurred in the midst of the Lok Sabha general election when filing of nominations was going on in Himachal Pradesh (the last date of nomination in Himachal Pradesh was 23-04-2004), and since there was no time to decide the merger issue then, as an interim arrangement, the Commission decided that if any candidate filed nomination claiming to be candidate of HVC, and if Form A and Form B were signed by any of the State level office bearers as per the list available on the Commission's record, then such candidate could be treated as set up by HVC. The list of office bearers then on the record of the Commission was the list submitted by the party with its letter dated 21-11-2000.

3. Later, the Commission received, on 24-04-2004, a communication dated 17-04-2004, from Shri Sukh Ram stating that the State Executive Body of the party passed a resolution on 17-03-2004, authorizing him to take decision about merger of the party with INC and accordingly, in exercise of the power so given, he, on 12-04-2004, took the decision to merge the HVC with INC in the presence of Shri Kapil Sibal, Spokesman of INC.

4. After completion of the elections, the Commission wrote to Shri Sukh Ram and Shri Karam Chand Bhatia to submit documents in support of their respective claims. Shri Sukh Ram was asked to furnish the documents to show that the principles laid down in the Supreme Court's judgment in the case of APHLC Vs. Capt W. A. Sangma (AIR 1977 SC 2155) were followed in the case of the reported merger. He was also advised to submit documents relating to decision of merger at all levels of the party organization. Shri Bhatia was informed that the list of office bearers on the record of the Commission prior to the reported merger did not show either Shri Bhatia or Shri Sharma as office bearers of the party. Copies of the papers submitted by both the parties were exchanged between them and they were asked to submit their replies by 30-06-2004.

5. In the meanwhile, there was a rift between Shri Des Raj Sharma and Shri Karam Chand Bhatia, who had initially submitted the joint letter (dated 17-04-2004) opposing the alleged merger. Subsequent communications from them contained allegations against each other. Shri Sharma alleged that Shri Bhatia was not a primary member of the HVC and Shri Bhatia also raised the same allegation against Shri Sharma. They also intimated about election of different persons as party President. In the initial communication dated 17-04-2004, the claim was that Shri Sharma was elected as the Working President of the party and Shri Karam Chand Bhatia as the General, Secretary. In a subsequent communication dated 25-06-2004, Shri Sharma stated that there was a meeting of the party members on 20-06-2004 for election of the office bearers and that before the proceedings started, he submitted resignation from the post of Working President, but, at the instance of the members present at the meeting, he took up primary membership of the party and was later elected as the party President. The said meeting was stated to have been conducted by one Shri P. C. Kalia, S. P. (Wireless) (Retd.) as an Observer. There was no claim or indication that Shri Kalia was associated with the party as any office-bearer or even as a member of the party. Shri Karam Chand Bhatia, in his statement, stated that Shri Des Raj Sharma was not a primary member of the party and hence could not be elected as the party President. He claimed that Shri Teg Singh Thakur was elected as the party President on 26-06-2004 at the meeting of State Executive of the party. He also submitted a copy of a press note issued by the party on 08-04-2002 on the occasion of local bodies elections, which contained his name as one of the candidates of the party contesting the Corporation elections, to show that he was a member of the party.

6. Shri Sukh Ram, in his reply dated 29-06-2004, stated that the organizational elections were held in 2002 and Shri Anil Sharma was elected as the party President then. He claimed that the name of neither Shri Karam Chand Bhatia nor Shri Des Raj Sharma appeared in the list of office-bearers at any level of the party. Shri Sukh Ram further stated that the party elections were again held in 2004 and he enclosed copies of the papers relating to the said election. These papers contained, among others, two resolutions of 17-03-2004, one of which related to authorizing Shri Sukh Ram to constitute the executive body following which Shri Sukh Ram claimed to have constituted the executive on 17-03-2004 itself, and the executive committee so constituted, passed another resolution on the same day authorizing Shri Sukh Ram to decide about alliance with other parties or merger with any party. In exercise of the power so given, Shri Sukh Ram claimed to have decided about merger with INC. Shri Sukh Ram also submitted copies of communications stated to have been signed by the District Presidents of the party authorizing him as the party President, to decide about merger of the party. These were of different dates in February and March, 2004. The executive committee stated to have been constituted by Shri Sukh Ram on 17-03-2004.

also passed a resolution on 17-03-2004 on this. The position that emerged from the documents placed before the Commission indicated contradictory claims. First of all, Shri Des Raj Sharma and Shri Karam Chand Bhatia who had jointly raised the issue of opposition to the reported merger, later raised allegations against each other of not even being primary member of the party. In fact, Shri Des Raj Sharma has himself stated in one of his communications that he took up primary membership on 20-06-2004 on the suggestion of the members at the meeting held on that day, which is a clear admission that he was not a member of the HVC when the initial claim of his election as Working President was made in the joint letter dated 17-04-2004 signed by him and Shri Bhatia. The claim of Shri Sukh Ram also had some gaps. In these circumstances, the Commission decided to obtain further written statements from the parties, and exchanged copies of the papers among the three parties, asking them, vide letter dated 10-08-2004, to submit their reply latest by 31-08-2004. Shri Sukh Ram submitted an application, on 24-08-2004, praying for time upto 15-09-2004, to submit his reply, on the ground that he had received the papers only on 22-08-2004. The prayer of Shri Sukh Ram was granted. In the meantime, general elections to the State Legislative Assemblies of Maharashtra and Arunachal Pradesh were announced, and hence further consideration of the matter was deferred.

7. Shri Sukh Ram, in his written statement, submitted that Shri Des Raj Sharma was a member of the party only for a brief period and that he had left the party in 1999, had never taken up membership of the party since then and thus Shri Sharma had no *locus standi* whatsoever, to raise any matter related to the affairs of the party. He also submitted that Shri Sharma was also guilty of presenting false evidence and making wrong statements before the Commission in making the claim of having been elected as Working President of the party on 16-04-2004. Shri Sukh Ram stated that Shri Sharma submitted fraudulent list of office bearers. Shri Sukh Ram further stated that the merger was effected only after taking the members of the party into confidence at various meetings held at district levels, and that there was not a whisper of opposition to the merger from any one who was a bonafide member of the party at the time of merger.

8. Shri Des Raj Sharma, in his written statement (dated 26-08-2004), sought to rely on his appointment as spokesman of the party in 1997, and a letter dated 29-06-1998, addressed to him by Shri Kundan Singh Thakur, the office secretary of the party to support his claim that he was a bonafide member of the party. He contended that the party was re-organized on 17-04-2004, and that he was elected as the Working President of the party on that date and later as the party President on 20-06-2004. He referred to certain press reports attributed to some persons (S/Shri Teg Singh Thakur, Ramesh Bhan, Dina Nath Shashtri, Rajpal Chauhan and Jawahar Thakur), and also mentioned that the merger was opposed by one Shri Gurdas Ram, Treasurer of the Kangra District unit of the party. On the basis, Shri Sharma claimed that the merger was opposed by a substantial number of members of the party. Among the documents submitted by Shri Sharma along with his written statement were two papers purporting to be affidavits signed by a total of 14 persons, without any address or designation, and countersigned by Shri Sharma himself, stating that there was no meeting at which decision of merger was taken. Shri Sharma subsequently filed a letter dated 09-8-2004, enclosing an other letter of his dated 29-07-2004. While reiterating his other contentions, Shri Sharma also questioned the validity of election of Shri Sukh Ram as the party President in March, 2004 as claimed by Shri Sukh Ram. He reiterated that there was no general body meeting of the party to decide the issue of merger. He also stated that Shri Karam Chand Bhatia was expelled from the party on 19-05-2004 at a working committee meeting, for anti-party activities on the ground that he had sided with Shri Sukh Ram.

9. The Commission decided to hold a personal hearing in the matter, and authorized me under Section 19A of the Representation of the People Act, 1951 to hear the parties and pass order in the matter. Accordingly I heard the three parties on 13-12-2004.

10. Shri Des Raj Sharma who appeared along with his counsel, made some submissions about his association with Shri Sukh Ram and the party. He stated that the reported merger was a decision of Shri Sukh Ram. He also submitted that Shri Bhatia also had no *locus standi* in the matter. Shri Jasbir Malik, learned counsel of Shri Des Raj Sharma, submitted that Shri Sukh Ram has to establish that merger was properly and validly carried out.

11. Shri Karam Chand Bhatia submitted that Shri Des Raj Sharma was not member of the party and hence could not claim to be elected as the party President. He, however, stated that he was not in favour of merger of the party. He also handed over a letter of the same date. The letter mainly contained statements against election of Shri Anil Sharma as the 'Pradesh President' of the party, and about his own contentions regarding election of Shri Chaman Lal Gachli as the party President.

12. Shri Sukh Ram reiterated his submission that Shri Des Raj Sharma was not even a primary member of the party at the time of the merger, and hence, he had no right to raise any issue related to the affairs of the party, much less claim to be elected as the party President. He stated that Shri Des Raj Sharma was involved with other political parties and had ceased to be a member of the HVC. He contended that unless Shri Sharma could prove that he was heading a splinter group of the HVC, he had no right whatsoever to oppose the merger, Shri Sukh Ram submitted that neither Shri Sharma nor Shri Bhatia had made any claim to be heading or representing any splinter group of bonafide members of the HVC opposed to the merger.

13. After the hearing, all the parties were allowed time of one week to file their written arguments. Shri Des Raj Sharma filed written arguments on 20-12-2004, through his learned counsel. In the written arguments, while reiterating some of the contentions made earlier in his communications and at the hearing, Shri Sharma referred to the communication sent by the Commission to the Chief Electoral Officer, Himachal Pradesh, vide letter dated 22-04-2004, regarding the action to be taken in the event any candidate filed nomination claiming to be set up by the HVC. Shri Sharma seems to have given a totally incorrect interpretation of the said communication to claim that it was an authorization to him or to any group headed by him to set up candidates at the election on behalf of HVC. He further contended that Shri P. C. Oberoi was authorized by the Commission to appoint President and other office-bearers of the party, and consequently, Shri Oberoi had appointed him (Shri Sharma) as the Working President of the party on 17-04-2004, which again is a totally incorrect statement. I will deal with this in the later part. Shri Sukh Ram submitted a letter subsequently stating that the written arguments submitted by Shri Sharma were 'a bundle of lies'. Shri Karam Chand Bhatia did not submit any further paper.

14. As stated above, the three groups were granted time upto 20-12-2004 to submit their respective written arguments. In the meantime, on 17-12-2004, the Commission announced general elections to the Legislative Assemblies of Bihar, Haryana and Jharkhand. Hence, further consideration of this matter was again deferred, to be taken up after completion of these elections.

15. I have considered all documents placed on record by Shri Des Raj Sharma, Shri Karam Chand Bhatia and Shri Sukh Ram, and the submissions made by them and their learned counsels at the hearing. The constitution of HVC does not contain any express provision regarding the procedure for merger of the party with any other party. As per the party constitution, the party President is the top executive and the State Executive Committee is the apex representative body of the party. The list of office bearers on the record of the Commission at the time the issue of merger of the party was brought before the Commission, was the list submitted by the party with its letter dated 21-11-2000. As per the said list, Shri Sukh Ram was the President of

the party. Neither Shri Des Raj Sharma nor Shri Karam Chand Bhatia figured in that list. After the issue of merger was raised, Shri Sukh Ram submitted lists of office-bearers stated to have been elected subsequently in 2002 and in March, 2004. No list of any such office bearers was ever submitted to the Commission prior to this. It was for this reason that the Commission referred to the list submitted in November, 2000, in the letter dated 22-4-2004, addressed to the State Chief Electoral Officer, in the context of the Lok Sabha general election. Coming to the said letter dated 22-4-2004, as already observed earlier, since the dispute was raised before the Commission in the midst of the general election to the House of the People, and since the dispute could not be decided then, the Commission, had to resort to an interim arrangement for that election. Accordingly, the Commission decided that if any candidate filed nomination claiming to be a candidate set up by the HVC, then such claim may be accepted only if the requisite notices under paragraph 13, of the Election Symbols (Reservation and Allotment) Order, 1968, regarding setting up the candidate were received from any of the State level office-bearers then on the record of the Commission. The list on record then was the abovementioned list submitted in November, 2000. This was purely an interim measure for the purpose of the said general election, pending decision on the issue of dispute. The same interim arrangement was adopted for the bye-election from Guler Assembly Constituency held later last year. Shri Des Raj Sharma seems to have misinterpreted this interim arrangement as some sort of endorsement of his claim of representing and heading the HVC. It is also made clear here that at no stage did the Commission authorize any particular individual to set up candidates on behalf of HVC or to nominate office-bearers of the party as claimed by Shri Sharma in his letter dated 25-6-2004 and in the written arguments submitted on 20-12-2004. In the Lok Sabha general election, no candidate contested the election as candidate of the HVC although in the bye-election from Guler Assembly Constituency, one person did contest claiming to be candidate of the HVC and polled 265 votes.

16. On the claim of Shri Des Raj Sharma about his election first as the Working President on 17-4-2004, and later as the party President on 20-6-2004, the basic factor to be considered at the outset, in the context of the pleadings, is whether Shri Sharma had the basic qualification, i.e. membership of the HVC at the time of the alleged merger, to claim to lead any group of the party, Shri Sukh Ram and Shri Karam Chand Bhatia have placed on record copy of a letter dated 28-7-1999 signed by Shri Des Raj Sharma, addressed to Shri Sukh Ram, the then party President, resigning from the HVC and Shri Sharma has himself admitted this fact in his letter dated 26-8-2004. Shri Sharma has not produced any document to show that he had taken up membership of the HVC at any subsequent stage and before the reported merger. It is also an admitted fact that he had contested election to the Himachal Pradesh Legislative Assembly in 2003 as an independent candidate. Thus, the fact remains, admitted by all the three parties, that Shri Des Raj Sharma was not a primary member of the HVC when the party reportedly merged with the INC on 12-4-2004, and the date on which Shri Sharma claims to have been elected as the Working President of the HVC. As supporting document to back his claim of election as Working President on 16-4-2004, all that Shri Sharma had produced was a photocopy of a resolution stated to have been adopted by the workers of the HVC. The said paper contained ten signatures, some of which are illegible. Even the names of the signatories have not been indicated therein. It is also relevant to note that Shri P. C. Oberoi whose name figured prominently in some of the later communications from Shri Sharma, was not present at the alleged meeting on 16-4-2004. Regarding the meeting on 20-6-2004, at which Shri Sharma has claimed to have been elected the party President, the supporting paper submitted contained signatures of 58 persons. This is in a party with a strength of around two lakh members as per the statement of Shri Sharma himself in his letter dated 25-6-2004. It is a different matter that even in the case of these 58 persons, there is no evidence to show that they were officer-bearers or valid members of the HVC at the time of the reported merger.

17. As per the provisions of the constitution of HVC the party President is to be elected by the 'Rajya Parishad', and the Treasurer and General Secretary (ies) are to be appointed from among the members of the 'Rajya Karyakarini'. The party constitution does not mention about the post of 'Working President'. The other office-bearers are appointed by the party President

from among the members of 'Rajya Parishad'. Therefore, in view of the admitted fact that Shri Sharma was not even a primary member of the party at the time of the alleged merger, there is no way his claim of election as the Working President or the President of the party can be accepted, assuming that there was a post of Working President in the H V C. Consequently, the claim brought up by Shri Sharma about the H V C continuing to exist under his leadership can not be accepted.

18. There are several other discrepancies and contradictory statements in the communications received from Shri Sharma. For instance, in the first communication dated 17-4-2004, and in his letter dated 29-7-2004, Shri Sharma stated that he was appointed as the Working President on 16-4-2004 and the same date is shown in the proceedings of the meeting of the party, whereas in his letters dated 2-7-2004 and 26-8-2004, he has stated that he was elected as the Working President on 17-4-2004. Further, in his letter dated 17-4-2004, Shri Sharma stated that he was elected as Working President at a meeting of the office-bearers and members of the party on 16-4-2004, and in his letter dated 2-7-2004, he stated that his election was in a meeting of the executive body of the party. Again, in his letter dated 25-6-2004 and in the written arguments submitted on 20-12-2004, Shri Sharma claimed that he was appointed as the Working President by Shri P. C. Oberoi, who was earlier the Treasurer of the party, on 17-4-2004. All these contradictory statements add further credence to the conclusion that the claim of Shri Sharma is concocted and lacks credibility.

19. Coming to the claim put forward by Shri Karam Chand Bhatia, it is seen that Shri Bhatia has made at least three different claims in the span of about five months. In his first communication dated 17-04-2004, he had mentioned that Shri Des Raj Sharma was the new Working President. Later, he changed the position and took the stand that Shri Desh Raj Sharma had no *locus standi* in the affairs of HVC, as he was not even a member of the party. In his communication dated 29-06-2004, Shri Bhatia stated that Shri Teg Singh Thakur was the new party President, elected on 26-06-2004. In a subsequent communication dated 27-09-2004, Shri Bhatia retracted his statement again and informed that Shri Chaman Lal Gachli was the party President. In the meantime the Commission had received a letter dated 23-08-2004 from Shri Teg Singh Thakur, stating that he had not accepted any post of HVC, and that the party had already merged with the INC. Clearly, these contradictory statements and shifting positions on the part of Shri Bhatia do not inspire confidence, and make it difficult to attach any credibility to his claims based on such constantly changing statements. Further, Shri Bhatia has also not submitted any document to prove that any group of valid members of the HVC continues to function as a party. Thus, the position is that other than the claims about their alleged appointment as office-bearer of the party, neither Shri Sharma nor Shri Bhatia has submitted any document to show that the persons whose names have been shown by them in the list of office bearers or who were shown as having attended the meetings relied upon by them, were indeed valid members of the HVC at the time of the alleged merger. Such a documentary evidence assumes importance in view of the fact that Shri Sukh Ram had been maintaining right from the beginning that the names mentioned by Shri Sharma and Shri Bhatia were all of non-members and considering the fact that the names of ordinary members of the party are neither available on the records of the Commission nor have they been placed before it during the present proceedings. Among the names mentioned in the papers submitted by Shri Sharma, apart from Shri P. C. Oberoi no other name appeared in the list of State level office-bearers on the record of the Commission at the time of merger. Even in the case of Shri Oberoi, other than a photocopy of a paper containing some proceedings of a meeting claimed by Shri Sharma to have been held on 20-06-2004, in which Shri Oberoi is shown to have put his signature in token of having seen the said paper, the Commission has not received any communication or document from him claiming or supporting any claim of existence of any group of valid members of the party continuing as the HVC party. Further, he was not associated with any meeting organized by Shri Sharma prior to 20-06-2004. The only other name mentioned by Shri Sharma in his papers, which was on the list submitted by the party in November, 2000, was the name of Shri Gurdas Ram who was the Treasurer of the Kangra District unit of the

party as per that list. In this case also, other than the claim of Shri Sharma, there is no supporting document, in the form of any affidavit affirming support to the claim, or any similar document from Shri Gurdas Ram. Another aspect which should not go un-noticed is that the name of Shri Gurdas Ram cropped up only in the letter dated 26-08-2004 of Shri Sharma. His name did not find mention in any of the papers submitted by Shri Sharma till then, including in the papers related to the alleged meetings of 16-04-2004 and 20-06-2004.

20. There have been charges by Shri Sharma against Shri Bhatia forging his (Shri Sharma's) signature in a letter, and a complaint from Shri Bhatia accusing Shri Sharma of manipulating a letter of the Commission by selective editing, to present a picture before the press that the Commission had recognized his claim of representing the HVC. In the former case, Shri Sharma has claimed to have filed a petition before the Police authorities. It is not necessary to go into these allegations, as the documents in question are not being relied upon, and hence these are not material to the consideration of the issue at hand.

21. As regards the submissions of Shri Sukh Ram, although the flurry of events as reported by him starting with the internal elections in February-March, 2004, and the authorizations from the various District units given to Shri Sukh Ram to decide on the merger of the party with any other party, all in quick succession, could appear to cast a shadow of doubt, in the absence of any credible opposition to the merger by bonafide members of the party, backed by documentary evidence, there is no reason to turn down the claim of Shri Sukh Ram regarding the merger. As already explained above, there is no document brought on record to show that any group of persons who were valid members of the party had indeed opposed the merger, even though nearly one year has passed since the reported merger. On the other hand, Shri Sukh Ram has filed a large number of papers from various District Units claiming to be authorizations from these District Units to Shri Sukh Ram to decide about alliance or merger of the party. Although Shri Sharma and Shri Bhatia have claimed that these were antedated and manipulated documents, they have not made any serious challenge regarding the genuineness of the names mentioned in these papers or bonafides of such persons as members of the HVC. Further, in various communications, both Shri Sharma and Shri Bhatia have recognized the fact that on the date of the reported merger (12-04-2004), Shri Sukh Ram was the party President. This is clear from the various communications from both Shri Sharma and Shri Bhatia, starting with their joint letter dated 17-04-2004, in which they have stated that Shri Sukh Ram was the party President before the alleged merger, although, Shri Sharma, in one communication (dated 26-08-2004) has challenged the validity of the election of Shri Sukh Ram as the party President. But, no value can be attached to this late-stage challenge, which apparently is another after-thought, in view of the various statements on numerous other occasions starting from the first communication dated 17-04-2004, describing Shri Sukh Ram as the party President before the merger. As already seen, when the issue was first raised in the letter dated 17-04-2004, it was not the election of Shri Sukh Ram as party President that was under challenge. On the other hand, it was the issue of Shri Sukh Ram, the party President, leaving the party, and its consequences that was raised by Shri Sharma and Shri Bhatia.

22. In view of the foregoing, and having regard to all facts and circumstances of the matter, under the authorization given to me under Section 19A of the Representation of the People Act, 1951, and in terms of paragraph 16 of the Election Symbols (Reservation and Allotment) Order, 1968, I hold that the Himachal Vikas Congress has merged with the Indian National Congress and has ceased to exist as a separate political party. Therefore, the name of the party has to be struck off from the list of political parties on the record of the Commission. The symbol 'Telephone' which was the reserved symbol of the party will, resultantly, cease to be an election symbol.

Sd/-

(A. N. JHA),

Deputy Election Commissioner.